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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

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and Rehabilitation

Case No. C94 2307 CW

JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

1 The parties submit this Joint Case Status Statement pursuant to the Stipulation and
 2 Order entered March 28, 2011 (ECF No. 1868), which provides that “[t]he parties will file
 3 periodic joint statements describing the status of the litigation” every other month,
 4 beginning on May 16, 2011.

5 **CURRENT ISSUES¹**

6 **A. Plaintiffs’ Enforcement Motion Regarding Accommodations for Deaf, Blind, 7 and Low-Vision Class Members in the BPH Process**

8 On November 14, 2023, Plaintiffs filed a Motion to Enforce the Court’s prior orders
 9 in this case related to providing accommodations for deaf, blind and low-vision class
 10 members to prepare for parole-suitability hearings and complete post-hearing tasks. ECF
 11 Nos. 3525, 3525-1, 3525-2, 3525-3, 3525-4, 3525-5, 3525-6, 3525-7, 3525-8. Defendants
 12 filed their opposition on December 12, 2023. ECF Nos. 3543, 3543-1, 3543-2, 3243-3,
 13 3543-4, 3543-5, 3543-6, 3543-7. Plaintiffs filed their reply, and supporting declarations
 14 and exhibits, on December 27, 2023. ECF Nos. 3554, 3554-1, 3554-2, 3554-3, and 3554-
 15 4. Defendants filed their objections to Plaintiffs’ reply evidence on January 3, 2024. ECF
 16 No. 3556. Defendants filed a response to Plaintiffs’ reply evidence on January 11, 2024,
 17 ECF No. 3562, and Plaintiffs filed a reply to Defendants’ response seven days thereafter,
 18 ECF No. 3566. The motion is under submission.

19 **B. Allegations of Abuse, Retaliation, and Violence by CDCR Staff Against Class 20 Members**

21 **1. Plaintiffs’ Statement**

22 **a. RJD and Five Prisons Orders**

23 Plaintiffs continue to monitor remedial efforts found necessary in order to prevent
 24 further violations of the ARP and class members’ ADA rights at six prisons including
 25 changes to the staff misconduct investigation process and implementation of Audio Visual
 26 Surveillance Systems that include body-worn camera technology. *See* ECF Nos. 3059,

27 ¹ Statements are joint unless otherwise delineated as either *Plaintiffs’ Statement* or
 28 *Defendants’ Statement*.

1 3060, 3217 and 3218. Party agreements regarding Court ordered changes are found in
2 Defendants' RJD and Five Prisons Remedial Plans ("Plans"). See ECF No. 3393, Exs. A,
3 B.

4 Plaintiffs have produced multiple reports identifying ongoing failures to hold staff
5 accountable for misconduct. Plaintiffs' reports evidence incomplete and biased
6 investigations that thwart the discovery of misconduct and, even when misconduct is
7 apparent during the investigation, poor decision-making on the part of Hiring Authorities,
8 preventing accountability. Plaintiffs are seriously concerned that, at this point in the
9 reform process, Defendants are still failing to hold staff accountability for disability-related
10 misconduct.

11 Plaintiffs were very surprised to learn, through an Office of the Inspector General
12 ("OIG") report, that Defendants had closed hundreds of staff misconduct complaints,
13 reclassifying them as routine matters, in response to a shortage of staff to investigate such
14 complaints. See January 29, 2024 Special Report "*The Department Violated Its*
15 *Regulations by Redirecting Backlogged Allegations of Staff Misconduct to Be Processed as*
16 *Routine Grievances*" [https://www.oig.ca.gov/wp-content/uploads/2024/01/OIG-Special-](https://www.oig.ca.gov/wp-content/uploads/2024/01/OIG-Special-Review-No-SR-23-01.pdf)
17 [Review-No-SR-23-01.pdf](https://www.oig.ca.gov/wp-content/uploads/2024/01/OIG-Special-Review-No-SR-23-01.pdf). Plaintiffs have, for over a year, raised concerns about staffing
18 shortages in the Office of Internal Affairs ("OIA") and the impact of such shortages on the
19 court-ordered remedies to improve staff misconduct investigations. Despite multiple
20 meetings to discuss OIA staffing levels, Defendants failed to disclose to Plaintiffs that, in
21 an effort to reduce the backlog of cases, they were closing hundreds of staff misconduct
22 complaints. The parties and Court Expert met on February 22, 2024 about this failure.
23 Related, Plaintiffs also recently objected to unilateral changes Defendants have made
24 screening of staff misconduct complaints as routine matters, an action also taken in an
25 apparent effort to stem the flow of complaints. See Dkt. 3564, Exhibit A. If Defendants
26 are understaffed to conduct complete and thorough investigations into allegations of staff
27 misconduct the solution is to hire more staff, not to sweep complaints under the rug.

28 CDCR is a statewide system. Plaintiffs assert that violations of the ADA and ARP

1 found thus far at six prisons exist system-wide and are committed to bringing such
2 evidence before the Court until all class members are protected.

3 **b. False, Retaliatory and Discriminatory RVRs**

4 Despite significant progress made towards court-ordered improvements to the staff
5 misconduct investigation and disciplinary system, the endemic use of false and retaliatory
6 RVRs by staff to cover up disability-related misconduct and/or to retaliate against class
7 members who report misconduct remains a problem. *See* ECF No. 3296 at 9. The same
8 biased review that plagues the staff inquiry and investigation processes also denies class
9 members due process in disciplinary hearings, resulting in longer terms of imprisonment,
10 denials of privileges, housing at higher classification levels, and an unwillingness to report
11 future misconduct or request disability-related help.

12 Plaintiffs' counsel continues to identify class members who have received false,
13 retaliatory, discriminatory or otherwise inappropriate RVRs. The use of RVRs to retaliate
14 against and discourage the filing of staff misconduct complaints will persist unless
15 Defendants take action to identify and root out problems through meaningful reforms to
16 the RVR process.

17 Defendants have agreed to multiple changes, but Plaintiffs continue to raise
18 outstanding problems. Given the high number of complaints regarding retaliation in the
19 system, Defendants should take additional, proactive steps to discover whether individuals
20 who have filed staff complaints subsequently receive RVRs. All effort should be made to
21 root out this pervasive form of retaliation if CDCR is serious about ensuring the
22 effectiveness of the staff complaint process.

23 Further, the issuance of RVRs to incarcerated people for filing staff complaints after
24 the complaint is not confirmed remains a significant problem.

25 Plaintiffs are hopeful that the parties can agree to resolve problems and that
26 additional court intervention will not be necessary.

1 **2. Defendants' Statement**

2 **a. RJD and Five Prisons Orders**

3 Notwithstanding Plaintiffs' concerns and objections related to the recent revisions
 4 to the staff-misconduct processes, CDCR's staff-misconduct investigations and discipline
 5 processes are in compliance with this Court's orders applicable to the six prisons, as well
 6 as the comprehensive and effective remedial plans. ECF Nos. 3059, 3060, 3217, 3218, and
 7 3393. CDCR has dramatically overhauled its processes to ensure unbiased and complete
 8 investigations and, although not required by the Court's orders, Defendants have deployed
 9 statewide the processes that restructure CDCR's staff misconduct allegation, screening,
 10 referral, investigative, and disciplinary processes. As the Court has noted, "[t]hese agreed-
 11 upon measures constitute substantial improvements that will go a long way to bringing
 12 Defendants into compliance with the ARP and ADA at the six prisons." ECF No. 3356 at
 13 2. The Court found, the "implementation of these [] remedial measures is likely to have a
 14 positive impact on...the overall reliability of the outcomes of investigations." *Id.*, at 15.
 15 The parties met with the Court Expert on February 22, 2024, to discuss the recent OIG
 16 report and will meet again on March 19, 2024, to further discuss the Centralized Screening
 17 Team and other components of the staff misconduct process that may require coordinated
 18 modifications to ensure successful deployment of these statewide processes.

19 **b. Demands for RVR Reform**

20 Defendants have made significant progress and commitments to address Plaintiffs'
 21 demands that CDCR address the alleged practice of issuing false and retaliatory Rules
 22 Violations Reports (RVRs) to class members, as detailed in previously filed statements.
 23 *See* ECF Nos. 3412 at 14-16, 3526 at 7, 8. Defendants continue their discussions with
 24 Plaintiffs and the Court Expert, to further address Plaintiffs' concerns related to the RVR
 25 process noted above, and to further discuss CDCR's extensive proposed revisions to the
 26 extent such revisions are specifically related to class-member concerns. CDCR continues
 27 to address these issues during the parties' workgroups and to seek collaborative resolution
 28 of RVR issues specifically related to class-member accommodation or alleged

1 discrimination or retaliation to the extent it is required to do so under the remedial plans,
 2 the ADA, or prior court orders. Plaintiffs' general complaints about the RVR process,
 3 unrelated to class-member accommodations, are not properly raised in this case.

4 **C. Court Expert Investigation Into SATF, the State's Largest Prison**

5 **1. Plaintiffs' Statement**

6 In November 2021, this Court ordered the Court Expert to investigate the treatment
 7 of people with disabilities at the California Substance Abuse Treatment Facility and State
 8 Prison, Corcoran (SATF). ECF No. 3338. In December 2022, the Court Expert filed a 67-
 9 page report, finding that people with disabilities at SATF are "living diminished and need-
 10 lessly difficult lives," and as a result "face harsher prison conditions, and thus greater pun-
 11 ishment, than their peers." ECF No. 3446 at 4. People with disabilities were denied
 12 accommodations needed to safely and independently perform a wide array of activities,
 13 including to eat, perform bodily functions, write, and participate in rehabilitative programs.
 14 The Court, through increasingly detailed orders, has required corrective action, including
 15 additional analysis and reporting by the Court Expert and the development of policies and
 16 procedures by CDCR. *See* ECF No. 3467; ECF No. 3538.

17 Plaintiffs are glad that there finally is a plan to draft policies on several important
 18 issues, develop meaningful auditing mechanisms, and procure needed disability
 19 accommodations. Plaintiffs are discouraged that it required a Court order and that CDCR
 20 had steadfastly ignored these very issues **for years**, notwithstanding Plaintiffs' repeated
 21 reports and demands for action. *See* ECF Nos. 3510-1, 3510-2, 3510-3. It should not take
 22 a Court-ordered investigation, three reports by the Court Expert, multiple rounds of
 23 briefing by the parties, and multiple orders by the Court to compel the State to act in the
 24 face of undisputed violations of the ADA and ARP.

25 Since the Court Expert's first report, Plaintiffs have reported that many of the
 26 problems identified by the Court Expert at SATF can be found statewide and require
 27 statewide remedy. Plaintiffs also have found that issues identified by the Court Expert in
 28 2022 still persist at SATF, and Plaintiffs have identified other serious violations of the

1 ADA and ARP at SATF. CDCR's delayed and poor-quality responses to these concerns
2 demonstrate that CDCR still "has not demonstrated that it is able to self-monitor and self-
3 correct in the manner that would justify a lesser level of scrutiny by the Court and other
4 outside monitors." ECF 3473 at 5-6.

5 **2. Defendants' Statement**

6 The Court Expert's second report concerning the treatment of people with
7 disabilities at SATF recognized the numerous proactive measures implemented at SATF to
8 further respond to the needs of incarcerated people with disabilities. ECF No. 3500. The
9 report demonstrates that the coordinated efforts between CDCR and the California
10 Correctional Health Care Services (CCHCS), with the Court Expert's guidance and with
11 input from Plaintiffs, are working to effectively respond to the issues raised by the Court
12 and addressed by the Court Expert following his initial investigation. The Court Expert
13 has since reported that SATF has made "significant improvements in the delivery of
14 accommodations to class members" and that "the culture at SATF has improved," since his
15 first report. ECF No. 3500 at 4, 6. As noted in the report, class members have reported to
16 the Court Expert, through personal interviews and survey responses, "improvements in
17 their ability to get the accommodations they needed and in the attitudes of staff." ECF No.
18 3500 at 4. The Court Expert reports that through these responsive collaborative efforts,
19 SATF has significantly improved the process for receiving incarcerated people from other
20 institutions and has reduced the likelihood that class members lose access to Durable
21 Medical Equipment (DME) or medication necessary to accommodate their disabilities. *Id.*
22 The Court Expert further reported that SATF has improved the process for collecting and
23 handling patient requests for medical care (Form 7362s), has improved the processes for
24 issuing, repairing, and replacing DME (including through the successful relaunch of its in-
25 house wheelchair repair program), and has significantly improved the delivery of medical
26 supplies, such as incontinence supplies, to class members. *Id.* Furthermore, the Court
27 Expert states that "the current leaders and staff are to be given credit for the significant
28 effort they made to address the problems" identified in the first report. ECF No. 3500 at 5.

1 In response to this Court's order, the Court Expert issued a November 28, 2023
 2 Addendum to Second Report Regarding the Treatment of People with Disabilities at SATF
 3 to which the parties entered into a stipulation addressing multiple issues. ECF Nos. 3529,
 4 3538. Following the parties' stipulation, the Court issued its order setting deadlines for the
 5 further development, with Plaintiffs' input, of policies addressing various issues at SATF,
 6 including whiteboard captioning technology, accessible phones, and effective
 7 communication of announcements and, therefore, addressing Plaintiffs' concerns noted
 8 above. ECF No. 3538. On February 23, 2024, the parties and Court Expert met about
 9 several items addressed in the stipulation, and Defendants look forward to continued
 10 collaboration with Plaintiffs and the Court Expert to address and resolve these remaining
 11 issues at SATF.

12 **D. Accommodations for Deaf and Hard-of-Hearing Class Members**

13 **1. Plaintiffs' Statement**

14 Defendants for years have failed to provide adequate disability accommodations to
 15 people who are D/deaf and hard-of-hearing who, as a result of their disability have lived in
 16 significant isolation; they have not been able to meaningfully participate in prison
 17 programs, services, and activities and have not been able to maintain ties with loved ones.
 18 The few recent, halting steps forward in certain areas primarily are the result of this
 19 Court's order for an investigation of conditions at SATF and resulting orders to remedy
 20 ADA and ARP violations discovered during that investigation.

21 **CART.** Despite multiple representations to the Court that CART would be
 22 implemented statewide for a wide range of programs and activities, Defendants
 23 backtracked and have now indicated they intend to provide captioning through the
 24 "ViewSonic whiteboard," a device that relies on software to generate captions
 25 automatically, without correction from a human. In response to Plaintiffs' concerns about
 26 the reliability of this untested software, on December 7, 2023, this Court ordered
 27 Defendants to provide Plaintiffs with a demonstration of the ViewSonic whiteboard in
 28 "multiple institutional settings" and to have a subject matter expert present at the

1 demonstration to answer Plaintiffs’ questions regarding the capabilities of the white
2 boards’ captioning technology. *See* ECF No. 3528 at 8.

3 The parties began planning for a joint demonstration of CART and ViewSonic,
4 scheduled to take place onsite at San Quentin on January 30, 2024, which would allow the
5 parties to assess whether ViewSonic is “an alternative reasonable accommodation” when
6 compared with CART. *See* ECF No. 3466 at 3. On January 16, 2024—fourteen days
7 before the demo—Defendants informed Plaintiffs that they planned to demonstrate
8 ViewSonic only and did not plan to provide CART as a comparison, contrary to their prior
9 representations. Defendants also informed Plaintiffs that they did not intend to
10 demonstrate ViewSonic (or CART) during any live programming, where the captioning
11 service will ultimately be used. The parties have resolved these differences in favor of
12 Defendants providing a demonstration that includes both CART and ViewSonic, and that
13 includes at least one live program. This dispute, however, caused the parties to postpone
14 the January 30 demonstration. The demonstration has been rescheduled for March 27,
15 2024.

16 It is the position of Plaintiffs, and their assistive technology expert, that
17 ViewSonic’s effectiveness in relation to CART cannot be adequately assessed unless it is
18 demonstrated in relation to CART. Upon meeting and conferring, the Court Expert
19 appeared to share that view, and with the assistance of the Court Expert, the parties
20 determined that a meaningful demo required (1) demonstration of CART and ViewSonic’s
21 transcription services side-by-side, and (2) demonstration of CART and ViewSonic in real-
22 life settings, such as programming, where its use is contemplated. Because of these
23 uncertainties regarding the content of the demo, the parties sought an extension of time,
24 and hope to complete the demo by April 1, 2024. Some outstanding concerns between the
25 parties remain, primarily regarding the need for ViewSonic and CART to be demonstrated
26 in more than a single live program. Plaintiffs hope that the parties can again come to a
27 compromise with the assistance of the Court Expert.

28 Plaintiffs’ counsel has two additional concerns: First, Defendants recently

1 announced that, for medical and mental health encounters, they do not plan to provide
2 captioning via ViewSonic or CART. Rather, they intend to use the automatic captioning
3 software, which has not been tested for efficacy or reliability in medical settings, “or an
4 alternative effective communication method such as written notes for the encounter,”
5 which is already theoretically being provided, and has already proved ineffective for
6 communicating medical information of varying complexity. Second, in the last Joint
7 Status Statement, Defendants announced they had conducted a previously-undisclosed
8 “internal demo” of CART and ViewSonic “with six class-member volunteers at San
9 Quentin,” and gained “insight” from the experience. *See* ECF No. 3564 at 14. Prior to
10 drafting the Joint Status Statement, Plaintiffs’ counsel had not been informed of this demo
11 during either its planning or execution, or at any time thereafter. Put differently,
12 Defendants intentionally communicated directly with class members about the subject
13 matter of active litigation, without the knowledge or consent of Plaintiffs’ counsel.
14 Plaintiffs have sent multiple written requests—including on January 9, 2024, and January
15 10, 2024—for further information about these demonstrations, including which class
16 members participated. Plaintiffs have received no response. Plaintiffs will object to
17 Defendants seeking to introduce, rely on, or otherwise use any information from their
18 undisclosed demo to the Court or in negotiations.

19 **Hearing Aids.** On March 1, 2024, Defendants informed Plaintiffs that they
20 executed a new hearing aid contract(s) on February 1, 2024. However, Defendants have
21 refused to provide it to Plaintiffs’ counsel because it is not available for “public
22 inspection.” Plaintiffs’ position is that the contract—or at minimum, the portions
23 pertaining to the availability of new hearing aids and whether they meet the specifications
24 the Parties negotiated with the assistance of the Court Expert, *see* ECF No. 3526 at 11–
25 12—must be produced to them so that they may carry out their enforcement obligations.
26 Plaintiffs will continue to seek information on the new hearing aids, their specifications,
27 and their availability.

28 **Accessible Phones.** D/deaf and hard-of-hearing people continue to be denied equal

1 access to phone services. Access to captioned phones and TTY/TDDs continues to be an
 2 urgent issue due to placement of the phones in inaccessible locations, burdensome
 3 restrictions, equipment failures, and other logistical barriers. Defendants informed
 4 Plaintiffs that they intend to replicate their current efforts at SATF—as governed by the
 5 SATF Order, ECF No. 3538—on a statewide basis. As of now, Defendants have
 6 indefinitely postponed disclosure of any timelines or information about statewide rollout of
 7 accessible phone installation until after they have complied with the Court’s requirements
 8 for SATF.

9 **Effective Communication of Announcements.** There remains no robust and
 10 durable system to provide and audit effective communication of announcements, which
 11 continues to be a significant issue for D/deaf and hard of hearing individuals. Defendants
 12 have shared a draft policy with Plaintiffs that would provide notification via tablet
 13 computers at SATF. Last Fall, Defendants also piloted the use of watches with vibrating
 14 alarms as way to provide notification, but have yet to announce the results. While
 15 Plaintiffs support these approaches as partial solutions, they are still only partial solutions,
 16 and Defendants have yet to propose a comprehensive, auditable solution for effectively
 17 communicating announcements to deaf and hard of hearing class members. Plaintiffs have
 18 significant concerns about Defendants’ proposal for effective communication of
 19 announcements and are working to resolve those concerns through the process outlined in
 20 the SATF Order.

21 **2. Defendants’ Statement**

22 Plaintiffs’ foregoing critique fails to capture the tremendous internal effort and
 23 attention being put forward to accommodate this population and, at this juncture, seems
 24 particularly sharp-elbowed in light of the significant overlap of these issues—CART,
 25 accessible phones, and effective communication of announcements—and the parties’
 26 recent stipulation following the Court Expert’s November 28, 2023 Addendum to Second
 27 Report Regarding the Treatment of People with Disabilities at SATF that addressed these
 28 issues. ECF Nos. 3529, 3538. Following the parties’ stipulation, the Court issued its order

1 setting deadlines for the further development, with Plaintiffs' input, of policies addressing
2 various issues at SATF, including whiteboard captioning technology, accessible phones,
3 and effective communication of announcements, therefore, addressing Plaintiffs' concerns
4 noted above. ECF No. 3538. Defendants' further efforts to accommodate this population
5 are detailed in previously filed statements. *See e.g.*, ECF No. 3526, at 16-18.

6 Plaintiffs' myopic attachment to CART as demonstrated above, fails to
7 acknowledge the unprecedented implementation of policy that provides these class
8 members with up-to-the-minute technology to enhance their day-to-day lives and further
9 ensure access. Overall, there are approximately 81 DPH class members statewide and
10 their preferred effective communication is sign language or other methods. As of February
11 29, 2024, there are 32 DPH class members, statewide, whose primary or alternate means of
12 effective communication is written notes. Beginning the week of November 20, 2023,
13 CDCR began deployment of iPhone and iPad devices equipped with the translate
14 application and the live captioning accessibility feature to DPH class members whose
15 primary or alternative method of communication is written notes, to include those who use
16 sign language. Class members who received an iPhone or iPad are approved to have the
17 device within their possession during program, services, activities, and housing unit
18 settings, including restrictive housing and any off-site appointments (*e.g.*, medical, same-
19 day court appearances). These devices use state-of-the-art speech-to-text technology that
20 addresses the needs of the DPH class members during informal day-to-day interactions as
21 well as programs, services and activities.

22 Moreover, in accordance with CDCR's independent obligation to identify and
23 remedy issues as they develop and to further accommodate those in its custody, CDCR
24 periodically conducts informal demonstrations, tests, or other events to, among other
25 things, gain insight from incarcerated people, identify logistical or technical obstacles, gain
26 differential data or information, and identify or resolve potential security concerns.
27 Mindful that the Court ordered Defendants to "make CART *or an alternative reasonable*
28 *accommodation* available at SATF," (emphasis added) CDCR has explored technological

1 alternatives to CART. During a November 21, 2023 workgroup meeting with Plaintiffs, in
2 an ongoing effort to promote collaboration and ensure transparency, CDCR reported on a
3 then-recent test of the CART and ViewSonic technologies, the results of which favored
4 ViewSonic over CART, for accuracy. During the November 21, 2023 meeting, and before
5 the parties entered into the SATF stipulation noted above, CDCR offered to provide a
6 demonstration of this technology and such a demonstration is scheduled for March 27,
7 2024, at San Quentin. On December 6, 2023, CDCR exhibited CART and ViewSonic to
8 six class-member volunteers at San Quentin. The class members were able to observe and
9 compare the various features of these technologies. Insight gained from the experience
10 suggests that ViewSonic is an equally effective and preferred alternative to CART.
11 Despite Plaintiffs' mischaracterization of this demonstration and incorrect insinuation that
12 CDCR staff are somehow prohibited from interacting with class members, correctional
13 staff have an obligation to test various forms of accommodations and, in fact, must do so to
14 meet CDCR's obligation. In the face of Plaintiffs' misleading characterization that
15 Defendants intentionally communicated with class members about the subject matter of
16 active litigation, it must be stressed that CDCR staff were genuinely interested in
17 obtaining honest input from participating class members about the demonstration and did
18 nothing to influence their choice of device. The surveys were collected as part of CDCR's
19 ongoing commitment to consult and work with incarcerated persons to gather feedback on
20 a new, alternative auxiliary aid and to evaluate its effectiveness. To the extent that
21 Plaintiffs have expressed concerns related to effective communication during medical or
22 mental health encounters, as noted above, CCHCS is committed to meeting its obligations
23 and will continue to provide timely updates to stakeholders.

24 As to accessible phone calls, Plaintiffs are conflating various sub-populations
25 because hard-of-hearing class members (as opposed to Deaf, non-signers and Deaf signers
26 when calling people who do not sign) are able to use their hearing aids and volume
27 controls to use the regular telephones to make and complete calls outside of the institution.

28 With respect to effective communication of public announcements to DPH class

1 members, CDCR continues to work diligently to ensure DPH class members receive the
2 information provided by these announcements through the implementation of multiple
3 existing processes such as use of whiteboards, flickering of lights, face to face
4 communication and the development of a new process that will take advantage of
5 technology available to the incarcerated population.

6 CCHCS provided Plaintiffs' counsel with a link to the public website Cal eProcure
7 on November 6, 2023, to review the hearing-aid contract bid information. The website
8 contains the hearing-aid contract, exhibits and addendums needed for potential bidders to
9 review, which was also accessible to Plaintiffs' counsel for their review. Defendants
10 understand that Plaintiffs are aware of the information posted on the website because
11 CCHCS received a request from Plaintiffs on November 27, 2023 alerting CCHCS to an
12 agreed-upon hearing-aid specification that had been inadvertently omitted from the bid
13 information. In response, and on that same day, CCHCS issued an addendum to the bid
14 information for the contract to include the specification. Plaintiffs' counsel has been
15 engaged and updated throughout the hearing aid bidding and contracting process. CCHCS
16 has given no indication the specifications in the formal executed contract are contrary to
17 what was agreed upon by all parties and posted on the public website.

18 Defendants remain committed to providing class members equal access to
19 programs, services, and activities in accordance with the ADA and the ARP and will
20 continue to confer with stakeholders to ensure the further accommodation of this
21 population.

22 **E. Accommodations for Blind and Low Vision Class Members**

23 **1. Plaintiffs' Statement**

24 Plaintiffs sent a December 10, 2021, demand letter to Defendants regarding the
25 need for a statewide system for identifying, documenting, and providing reading and
26 writing accommodations for blind and low-vision class members. As Plaintiffs explained
27 in the demand letter, Defendants must (1) identify, track, and produce the accessible
28 formats of written materials (such as large print, braille, and audio) that blind and low-

1 vision class members need to read and write (a statewide request first made by letter on
2 March 15, 2021) and (2) make auxiliary aids for reading and writing—such as electronic
3 video magnifiers—available to these class members outside restricted locations and hours.

4 On September 22, 2022, Plaintiffs submitted a proposed stipulation to Defendants
5 to resolve disputes around these two issues. The parties negotiated the terms of the
6 stipulation from that point until November 2023. In November 2023, after Plaintiffs filed
7 their motion challenging Defendants’ failure to adequately accommodate blind and low-
8 vision class members and deaf and hard of hearing class members preparing for their
9 Parole Board Hearings, Defendants promptly ceased negotiations over the draft blind/low-
10 vision reading and writing accommodations stipulation. Defendants also cancelled future
11 meetings of the joint blind and low-vision work group, which the parties had previously
12 formed to discuss issues relating to the accommodation of blind and low-vision class
13 members in CDCR custody. At present, there are no scheduled meetings of the blind and
14 low-vision workgroup, and there are no meetings scheduled to continue negotiations over
15 the blind and low-vision reading and writing accommodations stipulation.

16 On March 6, 2024, in response to a court-ordered stipulation requiring CDCR to
17 explain how when and how it would resolve “all issues” at SATF addressed in the current
18 draft Blind/Low-Vision Stipulation, Defendants produced a memorandum dated January
19 31, 2024, regarding visual accommodations for certain blind and low-vision class
20 members. Plaintiffs are currently reviewing Defendants’ production.

21 **2. Defendants’ Statement**

22 The vast majority of the issues addressed in the blind and low-vision stipulation
23 previously negotiated by the parties is addressed in the January 31, 2024 memorandum
24 titled “Accommodations for Incarcerated Persons with a Vision Impairment, Impacting
25 Placement.” This memorandum outlines the process for identification, tracking, and
26 provision of reading and writing accommodations, including electronic assistive devices
27 (e.g., electronic magnifiers, electronic readers, laptops), to vision-impaired class members
28 with a DPP designation of DPV. Pursuant to this memorandum, each DPV class member

1 who, following an individualized assessment by the Eye Care Institute vision consultants,
 2 is recommended an assistive device to accommodate their independent reading and writing
 3 needs, will be issued the recommended assistive device(s) for private and independent use,
 4 with minimal restrictions. These individually issued devices will allow DPV class
 5 members to privately and independently access printed materials related to CDCR
 6 programs, services and activities. Moreover, the January 31, 2024 memorandum and the
 7 attached template Local Operating Procedures: (a) direct provision of CDCR due process
 8 documents in Braille or large print format to DPV class members who, following
 9 individualized assessment, are determined to require large print or Braille print materials
 10 as primary visual accommodation; (b) outline the process for acquisition, issuance and
 11 replacement of the electronic assistive devices recommended as accommodations for DPV
 12 class members who cannot write by hand; (c) discuss DPV class members' individualized
 13 training on the use of the assistive devices recommended by the vision consultants; and (d)
 14 creates a timeframe for individualized assessments and the issuance of the recommended
 15 assistive devices.

16 **F. Effect of the COVID-19 Pandemic on the *Armstrong* Class**

17 On July 25, 2023, CCHCS issued a memorandum instructing institutions that they
 18 are no longer required to keep vacant the approximately 6,700 beds that had been
 19 identified for quarantine and medical isolation housing, and that this space will revert back
 20 to general population housing. This has served Defendants' efforts to reduce the number
 21 of class members on the expedited transfer list, notwithstanding remaining obstacles
 22 detailed in previously filed Joint Case Status Statements. ECF Nos. 3369, 3391, 3412,
 23 3452, 3484. As of March 1, 2024, there were 35 non-reception center class members on
 24 the expedited transfer list awaiting expedited transfer, which is similar to pre-pandemic
 25 numbers. Plaintiffs applaud Defendants' efforts to return the number of inaccessibly
 26 housed class members to pre-pandemic levels, and are hopeful that the significant
 27 reduction will be sustainable.

G. Problems Regarding Access to Assignments for Class Members

The program-access workgroup continues to meet to discuss credit earning, the assignment process, and disparities in the program-access assignment data in response to Plaintiffs' allegations of disability-related discrimination. ECF No. 2680 at 13-14. The parties met most recently with the Court Expert on December 6, 2023.

H. Statewide Durable Medical Equipment Reconciliation

1. Plaintiffs' Statement

Defendants have agreed to ensure that anyone who had not been seen by a health care provider in the last year would be seen for the purpose of reconciling their DME. The only outstanding issue then is to ensure a process whereby health care providers actually undertake a reconciliation during at least one encounter annually. Defendants maintain that this is already a requirement during visits with Primary Care Providers, yet thousands of class members without needed DME were identified by Defendants, despite this existing requirement. A process for ensuring that staff actually reconcile DME during encounters is necessary.

Unfortunately, Defendants' disability tracking system still fails to identify and track class members with upper-extremity disabilities. Plaintiffs are committed to resolving this ongoing problem.

2. Defendants' Statement

Collaboration between the parties continues to develop a sustainable DME accountability process and progress has been made as noted above and as detailed in the March 15, 2023 and May 15, 2023 Joint Case Status Statements. *See* ECF Nos. 3473 at 23-26; 3484 at 22-25. CCHCS and CDCR agree that individuals with upper-extremity disabilities that limit a major life activity, require accommodation under the ADA, but disagree that CCHCS and CDCR must create a new Disability Placement Program (DPP) code for multiple reasons communicated to Plaintiffs as noted in the March 15, 2023 Joint Case Status Statement. *See* ECF No. 3473 at 26. Notwithstanding these disagreements, CDCR and CCHCS will continue to communicate with stakeholders about these issues.

I. Joint Monitoring Tool

The parties remain committed to developing a strong and effective joint monitoring tool. The parties continue to convene small work groups, confer with the Court Expert about informal briefing, and continue to meet to discuss and resolve the few remaining disputes between the parties such as a format for scoring and reporting compliance.

J. ADA Structural Barriers, Emergency Evacuation Procedures, and Master Planning Process

The parties continue to engage in the Master Planning Process aimed at ensuring that CDCR prisons are accessible to people with disabilities in compliance with the ADA. The parties met with the Court Expert about these issues on February 13, 2024, and held multiple meetings regarding specific institutions as recently as March 7, 2024. The parties have agreed upon a new Master Planning process to share information or plans related to Master Planning projects and to tour completed projects. This new process may continue to evolve as it is put into use by the parties. Defendants recently shared initial construction documents, including detailed plans for accessibility improvements, with Plaintiffs' expert who is reviewing them and will provide timely feedback. The parties agreed that, when necessary, they will conduct joint tours with their respective experts, before ADA accessibility construction projects begin and after

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1 they are completed, to identify and resolve any ADA-non-compliance issues.

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3 Respectfully submitted,
4 DATED: March 15, 2024 ROSEN BIEN GALVAN & GRUNFELD LLP
5 By: /s/ Penny Godbold
6 Penny Godbold
7 Attorneys for Plaintiffs
8

9 DATED: March 15, 2024 ROB BONTA
10 Attorney General of the State of California
11 By: /s/ Trace O. Maiorino
12 Trace O. Maiorino
13 Deputy Attorney General
14 Attorneys for Defendants

15 **FILER'S ATTESTATION**

16 As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence
17 in the filing of this document from Deputy Attorney General Trace O. Maiorino, and that I
18 have maintained records to support this concurrence.

19
20 DATED: March 15, 2024 /s/ Penny Godbold
21 Penny Godbold
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